



Tax Administration

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Levies on Property Maintained by Financial Institutions for Collection of Delinquent Taxes or Child Support

Under the authority of G.L. c. 62C ("the tax administration statute"), and G.L. c. 119A ("the child support enforcement statute"), the Commissioner of Revenue ("Commissioner") may institute collection procedures for all delinquent taxes as well as delinquent child support payments that have accrued pursuant to an order or judgment for support, issued by a court or administrative agency of competent jurisdiction. *See generally* G.L. c. 62C, §§ 50–53; G.L. c. 119A, § 6. The purpose of this Directive is to provide the general rules and procedures that apply to financial institutions receiving a notice of levy from the Commissioner in connection with the Commissioner's tax collection or child support enforcement authority. Additionally, this Directive generally identifies the types of property commonly maintained at such institutions that are subject to levy under the tax administration and child support enforcement statutes. While this Directive particularly addresses processing of levies by financial institutions, its guidelines and rules may be applied by all holders of property with respect to which the Commissioner serves a levy.

For purposes of this directive, the term "financial institutions" includes commercial banks, savings banks, trust companies, savings and loan associations, building and loan associations, cooperative banks, homestead associations, credit unions, brokers, brokerage firms, mutual funds managers, investment companies, unit investment trusts, and similar entities doing business in Massachusetts. The scope of this Directive is limited to levies of property or rights to property under G.L. c. 62C, §§ 53–56 and G.L. c. 119A, § 6.

Issue 1:

What are the obligations of financial institutions when served with a notice of levy under G.L. c. 62C on property belonging to a taxpayer who owes Massachusetts taxes, or when served with a notice of levy on property belonging to a person who is delinquent in child support obligations under G.L. c. 119A?

Directive 1(a):

Information matching: For purposes of complying with the requirements of this Directive, a financial institution receiving a levy notice must match the information on the levy notice against each and every account on which the tax or child support obligor's name or taxpayer identification number appears, regardless of whether such information appears as the primary name or number appearing on the account, or as one or more secondary names or numbers appearing on the account.

Directive 1(b):

21-day suspension period: Except as provided in G.L. c. 62C, § 54(b), a financial institution which receives a levy notice must suspend any and all activity with respect to, and payments from any and all accounts or other property (such as safe deposit box contents) or rights to property (such as trust interests)

of the individual named on the levy up to the amount levied. This suspension ("holding period") must continue for 21 days from the date the levy is made, unless the period is waived in accordance with section 5(b) of this directive. Additional deposits may be made into an account during the 21-day holding period, or extension thereof. No withdrawals may be made upon deposits or other property during the 21-day holding period, or extension thereof.

The Commissioner may request an extension of the 21-day holding period in accordance with section 5(b) of this Directive.

During the prescribed holding period, or extension thereof, the levy shall be released only upon written authorization to the financial institution from the Commissioner, or the Commissioner's designee. If the financial institution does not receive such authorization within the prescribed holding period, or any extension thereof, the financial institution must surrender all amounts in the account (including any additional deposits made into the account during the 21-day holding period) and any interest accruing thereon prior to and during the holding period, up to the amount of the levy. The financial institution must also surrender any other property or rights to property it holds once the 21-day holding period has lapsed, again up to the levy amount. Such surrender of deposits, other property or rights to property must occur on the first business day after the holding period, or any extension thereof, expires.

A depositor may waive the 21-day holding period by notifying the financial institution of the depositor's intention to do so. Where more than one depositor is listed as the owner of a levied account, all depositors listed as owners of the account must agree to waive the 21-day holding period. If the 21-day holding period is waived, the financial institution must include notification to the Commissioner of the waiver with the surrendered deposits.

Issue 2:

What types of property maintained by financial institutions are subject to levy by the Commissioner under G.L. c. 62C, § 53, for purposes of collecting delinquent taxes owed by a taxpayer, or under G.L. c. 119A, § 6, for purposes of collecting delinquent child support payments?

Directive 2:

With exceptions enumerated in G.L. c. 62C, § 55A and subject to any exceptions required under G.L. c. 119A, § 6, or applicable overriding federal law, all property or rights to property belonging to a taxpayer or child support obligor on which there is a lien as provided in G.L. cc. 62C, 65, 65C or 119A is subject to levy. G.L. c. 62C, § 53(a); G.L. c. 119A, § 6. Any property or rights to property of a delinquent tax obligor or child support obligor that is held by a financial institution is subject to the levy process and requirements.

Property or rights to property subject to the Commissioner's levy authority generally includes, but is not limited to the following: checking accounts, savings accounts, money market accounts, certificates of deposit, savings bonds, Individual Retirement Accounts, qualified and nonqualified retirement or pension plan accounts (other than those plans which are clearly exempt from State levy by virtue of an overriding federal law), Keogh Plan accounts, employee welfare benefit plan accounts, payroll accounts, trust and escrow accounts that become payable to the taxpayer or obligor during the period for which a levy remains in force, uncollected bank deposits, mutual funds, dividends, other amounts generated by brokers, brokerage firms, investment companies, or unit investment trusts, and similar entities, and the contents of safe deposit boxes. All such accounts are subject to the Commissioner's levy authority, whether held individually in the name of the delinquent obligor, or whether the obligor is listed as a joint or co-owner on the account.

Issue 3:

What are a financial institution's obligations with respect to levied accounts, other property, or rights to property containing potentially exempt and non-exempt items?

Directive 3:

If a notice of levy pertains to accounts, other property, or rights to property which may include items or amounts of both an exempt and non-exempt nature under G.L. c. 62C, § 55A or c. 119A, § 6 (e.g. a bank account containing commingled funds), financial institutions must surrender the entire account to the Commissioner, not to exceed the amount of the levy. Financial institutions are not required to determine whether, or the extent to which, levied accounts, property or rights to property may be fully or partially exempt under G.L. cc. 62C, § 55A or 119A, § 6 before surrendering such property. The Commissioner will refund any portion of such property found to be exempt. G.L. c. 62C, § 64(b).

Discussion of Law:

1. Introduction

Pursuant to the provisions of Massachusetts General Laws chapters 62C and 119A, the Commissioner of Revenue is charged with enforcing the tax and child support enforcement laws, respectively, of the Commonwealth of Massachusetts. In enforcing these provisions against tax or child support delinquents, the Commissioner has broad collection powers, including, among others, the power to reach all property or rights to property belonging to a taxpayer or child support obligor whether real or personal, tangible or intangible, through the use of lien, levy, and seizure. *See generally* G.L. cc. 62C, §§ 50-56; G.L. c. 119A, § 6.

In general, the Commissioner may collect delinquent taxes and child support through the levy process. The levy may be served on any person, including financial institutions holding the tax-

payer's property or rights to property. A tax levy may be served ten days after demand for payment is made and the taxpayer has not paid. *See* G.L. c. 62C, § 53. A child support levy may be served if the child support obligor refuses or neglects to pay the past-due support amount specified in the notice of the child support lien, or any such additional amount which has accrued, 30 days after the notice of lien. *See* G.L. c. 119A, § 6.

2. Types of levies

The Commissioner generates automated levies, as well as collector-issued and manually-issued levies. These levies may be for tax administration or for child support enforcement purposes.

(a) Tax administration levies

There are two types of tax administration levies served on holders of a taxpayer's property. The first type of levy, the continuous levy, allows the Commissioner to take a certain amount of a taxpayer's wages, salary or other income as payment of a tax debt. This levy remains in effect until the liability is paid in full, or becomes unenforceable by reason of lapse of time. *See* G.L. c. 62C, § 53(d); (Form M668-W).

The second type of tax administration levy allows the Commissioner to take possession of the taxpayer's property or rights to property. *See* G.L. c. 62C, § 53(d); Form M668-A. Although traditionally the Commissioner has required this type of levy to remain in effect for six months from the date first served or until the liability is paid in full or becomes unenforceable by reason of lapse of time, the Commissioner hereby announces a change in policy with respect to such levies. Effective as of the date of this Directive, such levies remain in effect for 60 days. This change in policy simplifies tax administration by standardizing the effective period for levies on property for both tax administration and child support purposes. *See* 830 CMR 62C.55A.1 for exemptions to tax levies.

(b) Child Support Enforcement levies

There are also two types of levies served on holders of a child support obligor's property. The first, the wage levy, is a continuous levy which remains in effect until the child support debt is paid. G.L. c. 119A, § 6. The second is a levy upon other types of property, including bank accounts and other property held by banks, credit unions, brokerage firms and other financial institutions. Levies upon property held by these financial institutions remain in effect for 60 days. G.L. c. 119A, § 6.

3. Property subject to levy

Although the most common levies are made against a taxpayer's wages or bank accounts by serving the levy on the holder of the property, a levy may be made against any property or rights to property belonging to a taxpayer or child support obligor upon demand. A levy on a person's real estate or bank account, even a joint bank account, is authorized. *See Prudential-Bache Securities, Inc. v. Commissioner of Revenue*, 412 Mass. 243; 588 N.E.2d 639 (1992); (cf. *United States v.*

National Bank of Commerce, 472 U.S. 713, 724–725 (1985)). In addition, unpaid wages, the right to payment of monies available under an insurance policy, and a payee's interest in a cashier's check, also have been held to be property subject to levy. See *Prudential-Bache*, *supra*, at 244, citing *State ex rel. Dep't of Revenue v. Control Data Corp.*, 300 Or. 471 (1986), *United States v. Brody*, 213 F. Supp. 905, 908 (D. Mass. 1963), *aff'd sub nom. Equitable Life Assurance Soc'y v. United States*, 331 F.2d 29 (1st Cir. 1964), *Harris v. Hill*, 129 Ga. App. 403, 407 (1973).

In order to collect delinquent taxes or child support obligations, the Commissioner generally may levy upon any accounts or property in which the delinquent obligor is listed in the records of the financial institution as an owner, regardless of whether such accounts are listed as jointly owned by another person or persons, and without regard to whether such other joint owners are liable for the delinquent taxes or child support pursuant to which the levy was issued. Examples of such property include checking accounts, savings accounts, money market accounts, certificates of deposit, IRA accounts, Keogh Plan accounts, employee welfare benefit plan accounts, certain pension accounts (unless exempt under G.L. c. 62C, § 55A(a)(6) or an overriding federal law), payroll accounts, mutual funds accounts, unit investment trust accounts, brokerage firm accounts, safe deposit boxes, life insurance contracts, endowment contracts, and trust or escrow accounts that become payable to the obligor during the period for which the levy remains in force.

4. Property Exempt from Levy

Section 55A(a)(1)–(9) of Chapter 62C sets forth the property which is specifically exempt from levy for purposes of collecting delinquent taxes. Notwithstanding any other law, no property or right to property is exempt from levy other than the property specifically made exempt by G.L. c. 62C, § 55A(a). See G.L. c. 62C, § 55A(c). Chapter 119A does not contain a corresponding provision providing specific exemptions from levy for child support enforcement purposes. As a general rule, the Commissioner's levy authority for purposes of collecting delinquent child support obligations under G.L. c. 119A is broader than the Commissioner's authority to collect delinquent taxes under G.L. c. 62C, § 53.

The Commissioner recognizes that there may be overriding federal provisions of law that prohibit the Commissioner from levying on certain types of assets not specifically enumerated in Massachusetts levy exemption provisions. However, the mere fact that a particular federal law may contain a prohibition against the alienation of assets does not, in and of itself, preclude the Commissioner from levying against such assets. The Commissioner is precluded from exercising his levy authority only where such provisions clearly override State law.

The following items are exempt from levy for tax collection purposes. Some of these items are not exempt from levy for purposes of collecting delinquent child support.

- *Unemployment Compensation.* Any amount payable to an individual with respect to his unemployment, including any portion thereof payable with respect to dependents, under an employment compensation law of the United States, or of any state is exempt, for purposes of collecting delinquent taxes. See G.L. c. 62C, § 55A(a)(4).

- *Certain federal pension or retirement benefits.* Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force and Coast Guard Medal of Honor Roll 38 U.S.C. § 562, and annuities based on retired or retiree pay under 10 U.S.C. chapter 73 are exempt for purposes of collecting delinquent taxes. See G.L. c. 62C, § 55A(a)(6).

- *Workers' Compensation.* Any amount payable to an individual as Workers' Compensation, including any portion payable with respect to dependents, under a workers' compensation law of the United States, or of any state is exempt for purposes of collecting delinquent taxes. See G.L. c. 62C, § 55A(a)(7).

- *Amounts necessary to comply with pre-existing child support orders.* If the taxpayer is required by a judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment is exempt. See G.L. c. 62C, § 55A(a)(8).

- *Exempt portions of wages, salary, or other income.* Any amount payable to or received by an individual as wages or salary for personal services, or as income derived from other sources, during any period is exempt, to the extent that the total of such amounts payable to or received by him during such period does not exceed the applicable exemption amount determined under G.L. c. 62C, § 55A(a)(9)(d). For determination of amounts exempt from levy for individuals paid on a daily, weekly, biweekly, monthly, bimonthly or other basis, refer to Determination of Amount Exempt from Levy regulation, 830 CMR 62C.55A.1.

The following benefits are exempt from levy for *both* tax and child support debts:

- *Supplemental Security Income (SSI).* Any amount payable to or received by an individual with respect to his or her eligibility for Supplemental Security Income, under the Social Security law of the United States, is exempt from levy for purposes of collecting taxes and delinquent child support obligations. 42 U.S.C. §§ 407(a), 1383(d)(1).

- *Railroad Unemployment Insurance Benefits.* Any amount payable to or received by an individual with respect to his or her eligibility for railroad unemployment benefits, under the Railroad Unemployment Insurance Act of the United States, is exempt from levy for purposes of collecting delinquent taxes and child support obligations. 45 U.S.C. § 352(e).

For other exempt items that are not likely to be found in bank, credit union, brokerage firm or mutual fund accounts, see G.L. c. 62C, § 55A(1)–(3); (5).

5. Legal obligations of institutions served with a notice of levy for unpaid tax or child support obligations

(a) General requirements

In general, any person in possession of, or obligated with respect to property or rights to property upon which a levy has been made by the Commissioner, must, upon demand, surrender all of the property or rights to property necessary to satisfy the levy, except such part of the property or rights that is, at the time of such demand, subject to an attachment or execution under any judicial process. See G.L. c. 62C, § 54; G.L. c. 119A, § 6. Therefore, when any financial institution described in this Directive receives a notice of levy from the Commissioner, such institution must match the information on the levy notice against each and every account on which the tax or child support obligor's name or taxpayer identification number appears, regardless of whether such information appears as the primary name or number on the account or as one or more secondary names or numbers on the account. After determining that a match exists, either by name, social security number or other taxpayer identification number, the financial institution must surrender all property and rights to property described in the notice of levy in accordance with Section 5(b) of this Directive, except any property that is exempt or is, at the time of such demand, subject to an attachment or execution under any judicial process. *Id.*

1. "and" accounts

Financial institutions and their customers sometimes establish accounts requiring more than one signature before withdrawal of funds can be made. For purposes of this Directive, such accounts are termed "and" accounts. Where a levy is served naming one of the depositors of an "and" account, and the financial institution is on notice that more than one signature is required before withdrawal from the account can be made, the institution is not required to surrender the account assets unless the required signatures are obtained. Rather, financial institutions must notify the Commissioner when a delinquent obligor is listed as a signatory on an "and" account and whether the contractual relationship between the institution and the particular obligor prohibits the institution from making unauthorized withdrawals, including debiting an account in response to a levy for delinquent obligations of one of the depositors.

(b) 21-day holding period for levied accounts

In general, financial institutions (and other property holders) receiving a levy on a depositor's account or with respect to other property or rights to property must withhold any and all payment from the account, up to the amount of the levy, for 21 calendar days from the date of the levy. During this 21-day period, taxpayers or child support obligors have an opportunity to notify the Commissioner of errors with respect to the levy. Tax-

payers or child support obligors may notify the Commissioner by following the procedures set forth in section 5(e) of this directive. Telephone notification does not constitute or substitute for the filing of a written request for the return of property wrongfully levied. See *generally* Treas. Reg. § 301.6343-7(b)(2).

Depositors may waive the 21-day waiting period by informing the financial institution. When the financial institution surrenders levied deposits or other property at the end of the 21-day holding period, the institution must include principal plus any interest earned before or during the 21-day holding period, up to the amount of the levy. Interest on levied accounts is reached only where the amount in the account on the date of levy is less than the amount of the levy, and the account is interest-bearing. The levy applies to both those funds or other property on deposit at the time the levy is received and to funds or other property or held and received during the period for which the levy is effective. On the first business day after the 21st day, the amount must be surrendered unless the Commissioner releases the levy or requests any extension of the holding period. Surrendered interest is reported to the Commissioner as interest paid to the depositor.

With respect to tax levies, if a depositor or other person believes that there is an error with respect to the levied upon property which such person wishes to have corrected, he or she must notify the Commissioner, or the Commissioner's designee, by telephone via the telephone number listed on the face of the notice of levy. The Commissioner or the Commissioner's designee may require any supporting documentation necessary to complete the review. The telephone notification provided for in this section does not constitute or substitute for the filing of a written request under section 5(e) of this directive, for the return of property wrongfully levied upon.

If any account or other property upon which a levy has been made is comprised *solely* of items or amounts that are exempt from levy under G.L. c. 62C, § 55A, G.L. c. 119A, or an overriding provision of federal law, the institution upon which the levy has been served must notify the Commissioner that such amounts are exempt and not subject to surrender. If, however, any account or other property is comprised of commingled assets which are not readily identifiable in nature or amount, as exempt from levy under applicable statutes, such institutions must surrender the contents of the entire account.

Although certain types or amounts of property may be exempt from levy under G.L. c. 62C, § 55A or G.L. c. 119A, institutions upon whom a levy has been served with respect to tax or child support delinquencies are not required to determine the extent to which accounts containing commingled amounts are exempt from levy before surrendering the property to the Commissioner. Rather, persons claiming that any property has been wrongfully levied upon may apply to the Commissioner for a return of the property pursuant to G.L. c. 62C, § 64(b). See section 5(e), below, for further information. If the Commissioner obtains property by seizure rather than by levy, the officer seizing property

of the type described in G.L. c. 62C, § 55A(a) must appraise and set aside to the owner the amount of such property declared to be exempt, in accordance with the provisions of G.L. c. 62C, § 55A(b).

(c) Effect of compliance with Notice of Levy

Financial institutions and other persons in possession of, or obligated with respect to, property or rights to property subject to levy upon which a levy has been made, that surrender such property or rights to property or discharge such obligation to the Commissioner, are discharged from any obligation or liability to the delinquent taxpayer or child support obligor with respect to such property or rights to property arising from such surrender or payment. See G.L. c. 62C, § 54(d); c. 119A, § 6(8). In the case of a levy which is satisfied pursuant to G.L. c. 62C, § 54(b); c. 119A, § 6(b)(6); with respect to a life insurance or endowment contract, such institution is discharged from any obligation or liability to any beneficiary arising from such surrender or payment. *Id.*

(d) Effect of failure to comply with Notice of Levy

Whether a levy has been issued for tax collection or child support purposes, any person who fails to surrender any property to or rights to property subject to levy upon demand by the Commissioner is personally liable to the Commonwealth for the value of the property or rights not surrendered, not exceeding the amount for which the levy was made, plus costs and interest. See G.L. cc. 62C, § 54(c)(1); 119A, § 6(b)(7). In addition to personal liability, these statutes also provide for the imposition of penalties for failure to honor the levy. *Id.*

Section 73(a) of chapter 62C provides that any person acting in any fiduciary capacity (including but not limited to an officer or employee of a corporation, a member, officer, or employee of a partnership, or a trustee, officer or employee of a corporate trust who as such officer, employee, member or trustee is under a duty to perform or refrain from performing the act to which the violation occurs) that attempts willfully to evade or defeat any tax imposed by or administered under chapters 60A, 62 through 65C inclusive, 121A § 10, or c. 138, § 21 shall be guilty of a felony. Section 73(a) also imposes fines and possible imprisonment for "[a]ny person who willfully removes, deposits, or conceals, or is concerned with removing, depositing, or concealing, any property upon which levy is authorized by section fifty-three, with intent to evade or defeat the assessment or collection of any tax." G.L. c. 62C, § 73(f)(4).

(e) Procedure for claiming wrongful levy

Any party claiming an interest in property upon which a levy has been made and claiming that such property has been wrongfully levied upon may apply to the Commissioner for a refund of any such amount.

1. Tax levies

With respect to tax levies, such persons may contact the Customer Service Bureau at (617) 887-6367. A written request for a review based upon a claim that the property levied upon for

tax purposes was exempt, or because the obligor did not owe the amount stated on the levy notice, or because the levy causes the obligor serious hardship, must be mailed to: Massachusetts Department of Revenue, Taxpayer Services Division, Customer Service Bureau, PO Box 7021, Boston, MA 02204.

The written request must contain the following information:

- (1) The name and address of the person submitting the request;
- (2) A detailed description of the property levied upon;
- (3) A description of the claimant's basis for claiming either an interest in the property levied upon or other basis for claiming that the property was wrongfully levied; and
- (4) The name and address of the taxpayer, the originating Department of Revenue office, and the date of the levy as shown on the Notice of Levy, or, in lieu thereof, a statement of the reasons why such information cannot be furnished.

2. Child Support levies

With respect to child support levies, such persons may contact the Child Support Enforcement Division, Customer Service Bureau at (800) 332-2733. A written request for review based upon a claim that the property levied for child support purposes was exempt, or because the obligor did not owe the amount stated on the levy notice, or because the levy causes the obligor serious hardship, must be mailed to: Massachusetts Department of Revenue, Child Support Enforcement Division, PO Box 4068, Wakefield, MA 01880.

The form for obligors to request a review of a levy to collect past-due child support is provided with the obligor's copy of the Notice of Levy. The form must be returned to the above address to request a review; the Department of Revenue cannot review a case over the telephone. The only exception is a claim of hardship. A DOR Child Support Enforcement representative will advise the caller what documentation is needed for DOR to review a claim of hardship.

3. Commissioner's determination

If, after receipt of the levied property and upon a satisfactory showing by the person challenging the levy, the Commissioner finds that the property or any portion of the property has been wrongfully levied upon, he may return 1) the specific property levied upon, 2) an amount of money equal to the amount of money levied upon, or 3) an amount of money equal to the amount of money received by the Commonwealth from a sale of such property. See G.L. c. 62C, § 64(b), and 830 CMR 62C.64.1 for further information.



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